



Regulatory Charter – consultation draft



Purpose

This Regulatory Charter defines our approach to regulation in respect of AFSA's roles within the financial services sector. It guides the regulatory strategies for Insolvency and the Personal Property Securities Register (PPSR) by explaining the priority setting process and outlines the measurement and reporting framework for compliance; and the compliance methods and tools we use to get things done.

Our purpose and vision

AFSA's **purpose** is to maintain confidence in Australia's personal insolvency and personal property securities systems. AFSA's vision is to be a world-class government service provider and **firm and fair regulator** that delivers improved and equitable financial outcomes for consumers, business and the Australian community. We need to deliver outcomes that all our stakeholders consider to be appropriate, consistent and effective.

By **firm** we mean we are values based, consistent and clear, leaving no room for doubt in what we mean. We maintain a level of conviction in our decisions, whilst observing natural justice.

By **fair** we mean we work within a clear and transparent set of guidelines which apply to all. We exercise integrity and apply discretion for particular circumstances in a reasonable, transparent way, whilst maintaining independence.

Who we regulate

AFSA regulates:

- personal insolvency practitioners acting as trustees in bankruptcy, debt agreement administrators or controlling trustees
- debtors who are a party to a bankruptcy, debt agreement or personal insolvency agreement
- creditors who are owed money by individuals who are insolvent or subject to a debt agreement
- those who register or search security interests on the PPSR.

However, we will work with others to influence the insolvency and financial services system as a whole, not only those directly impacted by our legislation.

How we regulate

AFSA uses a risk-based approach to regulation (a responsive regulator) that also seeks to focus on the areas of greatest harm (harms-based approach). This means that the potential harms or ‘problems’ selected for prioritisation and resourcing will be those that pose the biggest risk to the personal insolvency or credit system and/or our regulated population; or those that are seen to be strongly in the public interest.

We balance the taking of a planned approach to monitoring compliance of our regulated population against being agile in responding to evolving and emerging harms and threats to the systems we administer.

Business and the community at large also expect that we will regulate in a balanced way, ensuring that those who intentionally misuse the personal insolvency and personal property securities systems are dealt with appropriately, while creating an environment that makes it as easy as possible for our stakeholders to comply. We, for example:

- Publicise our compliance activities to keep stakeholders informed and to be transparent in what we do
- Risk profile individual practitioners against a series of quantitative and qualitative indicators and use these profiles in targeting our ongoing compliance activities
- Use our data to monitor the PPSR to identify potential misuse and take specific action to remedy the misuse – evidence based
- Work closely with professional associations and stakeholder groups to ensure we understand the impact of our actions, and can respond to issues and amend our actions as necessary
- Consider the full suite of tools and powers in our toolkit in determining an appropriate and proportionate response to risks or harms - innovation
- Are mindful of other issues including red tape, barriers to entry and regulatory capture.

Our regulatory strategies and plans

Our Corporate Plan outlines our purpose is to foster confidence in our systems. To achieve our purpose we currently prepare a rolling three year Regulatory strategy and an annual Compliance program for Insolvency and an annual Regulatory strategy for PPSR. These seek to build stronger stakeholder confidence in the personal insolvency and personal property securities systems through effective regulatory activities that are timely, consistent and appropriate. Our regulatory strategies also define our key priorities and take into account the following inputs:

- Strategic intelligence obtained from environmental scanning, engagement with a range of stakeholders and assessment of the political, economic and social environment. These inputs are likely to result in the identification of new harms-based issues.
- Harms-based issues, which incorporate our strategic regulatory risks, that identify real or potential harms (and gaps in information about harms which needs to be addressed). We will develop a program and/or problem-centric approach to deal with agreed high priority harms, taking into account the significant diversity and full spectrum of potential harms in the Australian community.
- Compliance program themes and activities based on ongoing priorities and using operational intelligence (e.g. inspection and enforcement program results, ongoing monitoring of practitioners)

and the register, AAR, ATR, PPSR data analytics etc) and tactical intelligence (systemic issues) to inform the future themes.¹

Each strategy will focus on the strategic objectives for the next relevant period and will identify the challenges and opportunities to fulfilling our purpose and the harms that are being addressed. They will include the following elements:

- Our purpose and vision
- Outcomes sought
- Regulatory objectives for the next three years or annually, as required
- Summary of actions to achieve the objectives
- Summary of monitoring and review processes.

The annual Insolvency compliance program will focus on the specific actions and initiatives to be taken to address the identified prioritised insolvency harms for that year.

How we develop our strategies and program

The Chief Executive as guided by the AFSA Management Board (AMB) is the ultimate decision maker in relation to our regulatory strategies. The AMB will approve the separate strategies and supporting annual Insolvency compliance program. There are two separate strategies at this point in time for PPSR and Insolvency due to the fundamental differences in these functional areas of AFSA. We will consider the possibility of a single regulatory strategy for AFSA in the future.

Annually we will determine what specific objectives are being addressed and what activities will be taken as part of our three-year Insolvency plan or our annual PPSR plan. This allows us to reprioritise as required and include new risks and harms as they arise. The strategies will also drive our annual compliance activities and the key information will be published on our internet. This is reflected in Diagram 1.

Each functional or statutory area (Inspector-General in Bankruptcy, Official Receiver, Official Trustee, Personal Property Securities Registrar) will identify its key priorities for the forthcoming year (including any suggested compliance program work and future staffing capability needs) and submit these to the relevant program committee. After discussion and endorsement at the program committee meetings, the final agreed priorities for AFSA will be submitted to the AMB for approval. The AMB or Chief Executive may determine that a new strategy or priorities are to be incorporated.

The strategies that are endorsed will be supported by the Insolvency compliance program. The AMB will regularly monitor and review, via the program committees, the outcomes of the compliance activities undertaken under the strategies and insolvency compliance program for effectiveness. It will be agile in building on these outcomes when developing new strategies or amending existing ones.

¹ We have defined the key terms of compliance, regulation and enforcement we use as a regulator on our intranet. All AFSA's work can be classified as regulatory activities.

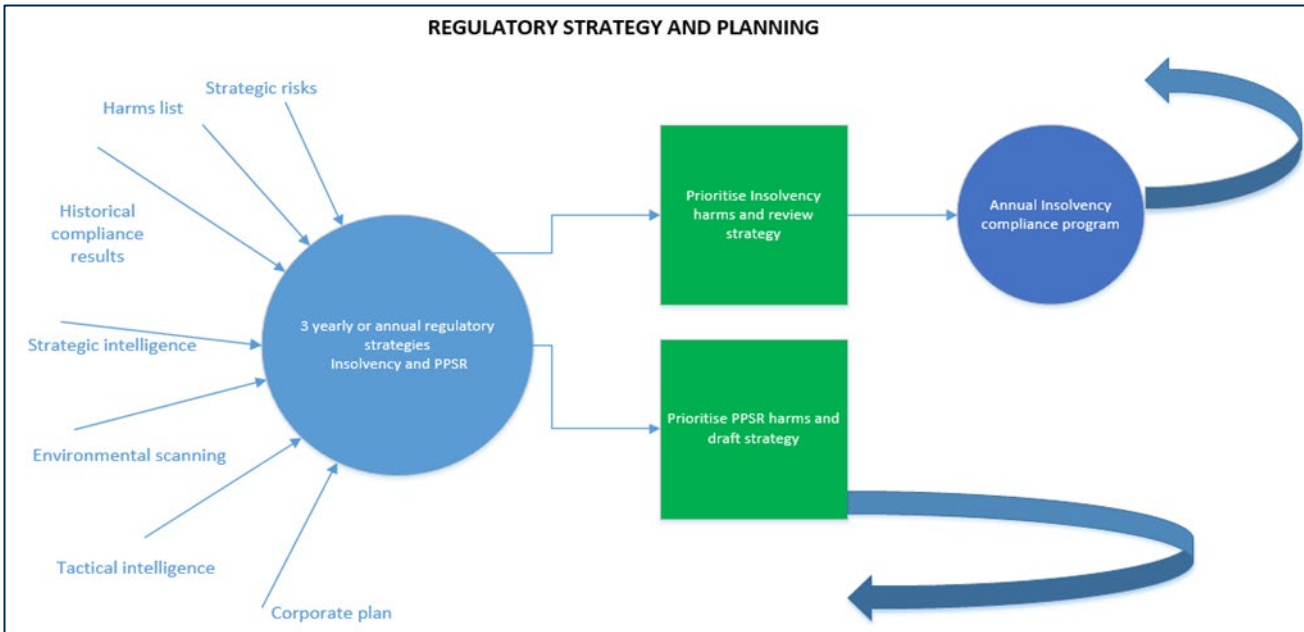


Diagram 1

How we implement - our regulatory toolkit

We use the full suite of regulatory tools and powers in considering how to effectively and efficiently implement our strategies. These can be generally classified into the four categories shown in diagram 2 below and are supported by a compliance toolkit for our staff which is available on the intranet.

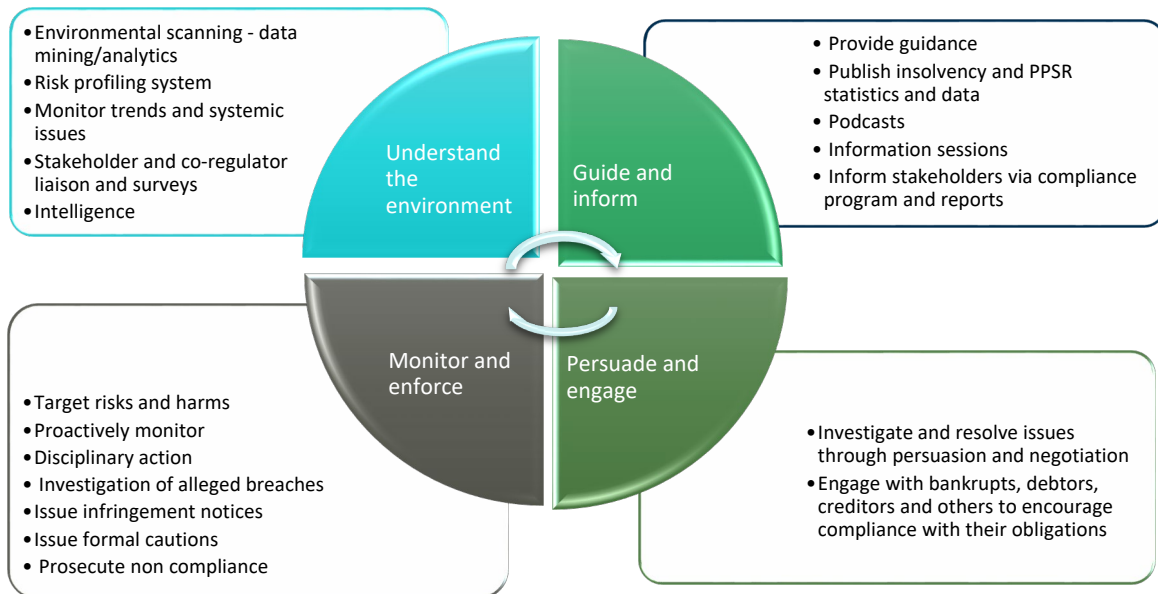


Diagram 2

We access our toolkit by applying our modified version of the Braithwaite compliance model. This is shown in Diagram 3 below and results in a suitable response being chosen depending on the attitude to and level of compliance or non-compliance of the individual or sector we are dealing with.

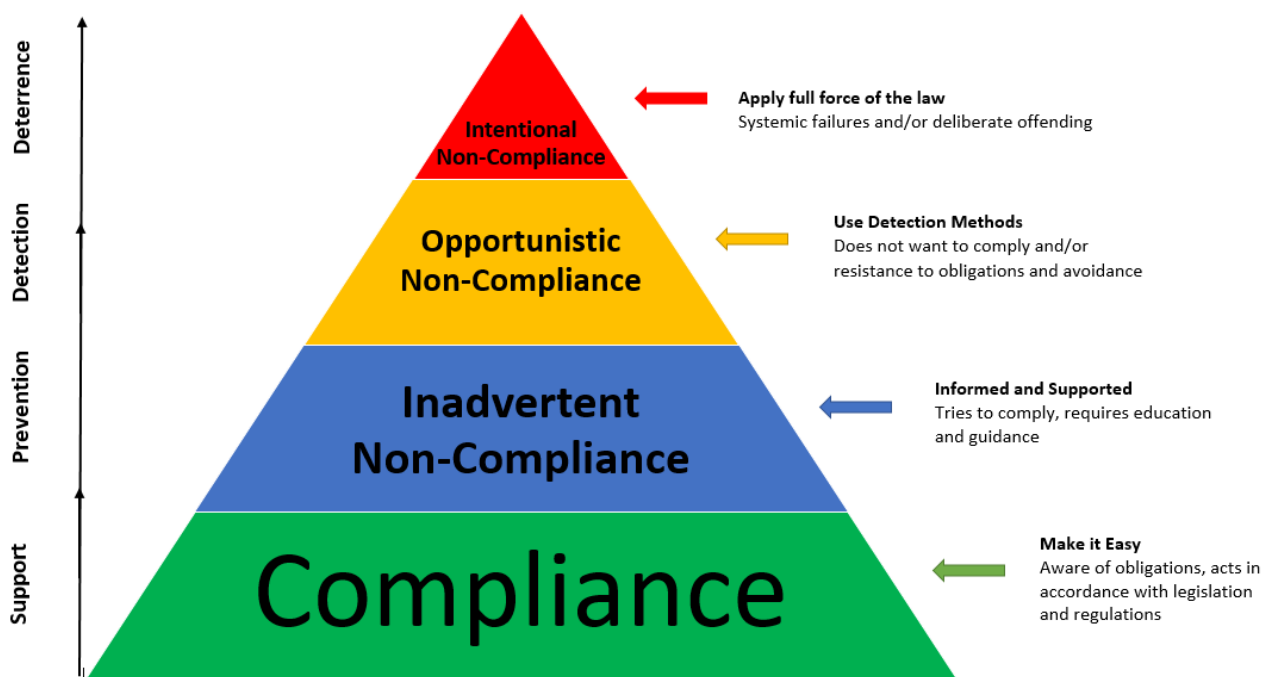


Diagram 3

How we ensure our staffing capabilities

Developing and maintaining essential workforce capability is a critical element to ensuring business success. The elements of this are:

- Do we have the right people in the right place at the right time?
- Are we responsive enough to see the future capability requirements?
- Are we agile enough to change?

A clear regulatory strategy drives our workforce capability requirements and success will be ensured via the development of a workforce capability strategy and plan that considers the needs identified in our regulatory approach. The AFSA workforce capability strategy identifies key capabilities now and into the future, aligns these with recruitment and development activities and identifies opportunities to engage with like agencies to seek, grow and enhance talent. The Program Committees will consider capability requirements as part of their terms of reference and will contribute to the development and review of the workforce capability strategies and plans.

How we monitor our strategies

The AMB has mandated to the Insolvency Program Committee and PPSR Program Committee the tasks of validating the regulatory strategies and supporting compliance programs. The Committees will review the key decisions and strategies adopted and the results that are being achieved. To ensure consistency and open communication across AFSA, there will be cross divisional membership on the Committees. The terms of reference for the Committees outlines their responsibilities for monitoring and reporting to the AMB to ensure actions being taken are achieving their strategic objectives and outcomes sought, or are being amended and improved as required.